

1           A. Yes, it is.

2           Q. And it will continue to be paid in the  
3 ordinary course?

4           A. Yes, it will.

5           Q. And in that regard, they're unimpaired,  
6 correct?

7           A. That is correct.

8           Q. The plan also provides for payment in full  
9 of administration and priority claims; is that  
10 correct?

11          A. Yes, it is.

12          Q. I would ask you to turn to Exhibit 5. Do  
13 you -- did you prepare that -- the document?

14          A. Yes, I did.

15          Q. And can you tell the Court what that is?

16          A. Yes. Hang on a minute, let me get  
17 organized.

18                 The first page is a -- basically the  
19 remainder of 2010's operating budget.

20          Q. Oh, I'm sorry. Is this misnumbered?

21          A. I'm just looking in the order I see --

22                 MR. BLUMENTHAL: Your Honor, my mistake.  
23 I'm sorry.

24                 THE WITNESS: So number -- I'm sorry, this  
25 is the --

1           Q.       (By Mr. Blumenthal) We're looking at  
2 Exhibit 5, the legal fees for 2009 and 2010.

3           A.       Right.

4           Q.       Is that what you have in front of you?

5           A.       Yes. I'm sorry.

6           Q.       Did you prepare that document?

7           A.       Yes, I did.

8           Q.       And what are the aggregate -- and does  
9        that reflect legal fees billed and incurred by the  
10     debtor and committee professionals and what's been  
11     paid to them?

12          A.       Yes. It details both.

13          Q.       And as the end -- at the end of April 30th  
14        what are the outstanding and unpaid legal fees to the  
15     debtor professionals and the committee professionals?

16          A.       There are -- there are two documents. One  
17        is for 2009. At the end of 2009, which is on -- if  
18        we're counting just front and back -- page 3,  
19        it's \$312,521. If you flip over, you will see  
20        another document which details legal fees for 2010  
21        for January, February, March, and April. And if you  
22        go to the end of that you will see an additional  
23        \$459,992.

24          Q.       So what's the approximate total  
25        outstanding amount; about 750,000 approximately?

1           A.     Approximately, yes.

2           Q.     And what is the approximate accrual of  
3 fees for May -- April, May, and June?

4           A.     Approximately 250,000.

5           Q.     So adding that, it would be a total of  
6 approximately a million dollars --

7           A.     That's correct.

8           Q.     -- of outstanding administrative claims  
9 unpaid as of the date hereof, correct?

10          A.     That's correct.

11           MR. BLUMENTHAL: Your Honor, I would move  
12 this exhibit into evidence.

13           THE COURT: Is there any objection to  
14 Exhibit Number 5?

15           MR. HOFMANN: None.

16           MR. WILSON: None, your Honor.

17           THE COURT: Exhibit 5 is received.

18           (Exhibit-5 received.)

19          Q.     (By Mr. Blumenthal) With respect to  
20 priority claims, does the debtor owe taxes to the  
21 State of Utah?

22          A.     It owes approximately \$200,000.

23          Q.     And under the plan those taxes will be  
24 paid?

25          A.     Yes, sir.

1           Q.     In addition to that are there regular  
2 payables that are outstanding as of the date hereof  
3 in conjunction with the operation of the Sky Lodge?

4           A.     Yes. And we had those as a normal course  
5 of business. As of this morning it was \$188,804.

6           Q.     And those are approximately 30-day  
7 payables?

8           A.     Yes.

9           Q.     And --

10          A.     One to 30, depending on when they came in.

11          Q.     Okay. And will those be paid in the  
12 ordinary course of business under the plan?

13          A.     Yes, they will.

14          Q.     Now, will -- are you familiar with the --  
15 you mentioned that WestLB -- are you familiar with  
16 the fact that WestLB is funding 2.9 million dollars  
17 for purposes of funding the payments necessary at  
18 confirmation; is that correct?

19          A.     I am.

20          Q.     Will that funding be sufficient to pay the  
21 claims of Jacobsen, the administrative creditors, the  
22 unsecureds electing to take 60 percent priority  
23 claims at confirmation?

24          A.     Yes, it will be.

25          Q.     Sir, how much cash will Easy Street

1 Partners have by the end of July, remaining?

2 A. We estimate that it will be approximately  
3 a quarter of a million dollars.

4 Q. Okay. So when you combine the cash that  
5 the debtor will have with the cash infusion that  
6 WestLB is making, there will be sufficient funds to  
7 confirm this plan; is that correct?

8 A. That is correct.

9 Q. Now, how much is WestLB funding  
10 additionally in capital?

11 A. They are providing a 1.5 million dollar --  
12 not a line of credit, but a working capital reserve.

13 Q. Right. All right. Could you describe the  
14 efforts to locate a plan funder, sir?

15 A. Yes. Between myself and BDRC -- I assume  
16 everybody knows who BDRC is?

17 Q. I think the Court is aware.

18 A. So BDRC and -- worked in conjunction with  
19 myself and also with Gemstone to review the operation  
20 of the property early on. We went through and  
21 developed a new five-year operating plan and did  
22 other financial restructurings. Once all that was  
23 put in place --

24 Q. By the way -- and by the way, that was a  
25 requirement under the cash collateral stipulation,

1       correct?

2           A.     That is correct.

3           Q.     Okay.

4           A.     Once that was circulated and improved by  
5     all the required parties, we then put together a  
6     presentation book which detailed the plan for exiting  
7     bankruptcy. And that book was circulated to over 60  
8     qualified investment groups throughout the country.

9           Q.     And they contacted you and you  
10    communicated with them?

11          A.     No. They were actually actively contacted  
12    by BDRC and ourselves. And then from that initial  
13    60-plus people that we went out to, we moved about 12  
14    of them into second-phase due diligence.

15          Confidentiality agreements were issued, and a much  
16    more deep exploration was done, which included site  
17    visits, personal meetings with myself and BDRC or  
18    phone meetings, or actually in a couple of occasions  
19    we flew to meet people in New York City, made  
20    presentations.

21           From that 12, that ended up with three  
22    what I would call real players. Two of those people  
23    executed plan funding agreements. One of those  
24    players actually put \$400,000 into escrow.

25          Q.     Now, ultimately, neither of these last two

1 or three groups materialized to go forward and  
2 consummate and actually become a plan funder; is that  
3 correct?

4 A. That is correct.

5 Q. And what was the primary issue or problem  
6 that you encountered with respect to them?

7 A. One of the potentials was their plan was  
8 based upon buy-in by an international group of  
9 investors -- real estate investors, which did not  
10 occur. The other two were domestically-oriented and  
11 when they got through their analysis of the money  
12 that would be needed to put in cash on confirmation  
13 plus working reserves and put that against what the  
14 payoff of the WestLB loan would be, it basically  
15 added up that they were paying par for the property  
16 according to the appraisal that came in at 20.6  
17 million dollars. And in today's environment, there's  
18 no investment group that could justify paying par for  
19 an investment.

20 Q. By the way, were any suitors turned away?

21 A. None.

22 Q. And you spoke to -- you with BDRC -- any  
23 and everyone who made inquiries; is that correct?

24 A. Anyone that would fog a mirror.

25 Q. Now, during these negotiations, did you

1       keep in touch and communication with WestLB as to the  
2 negotiations that were going on?

3           A.     Yes.

4           Q.     And did some of these potential plan  
5 funders actually sit down and have meetings with  
6 WestLB?

7           A.     They had two of the funders that went  
8 to -- of the three we spoke of -- met directly with  
9 WestLB representatives, and the third one had some  
10 telephone conversations.

11          Q.     Okay. And all of these negotiations were  
12 conducted at arm's length and in good faith, sir?

13          A.     Yes, sir.

14          Q.     What is the main objective of the plan?

15          A.     Well, the objectives of the plan were  
16 first, to get Jacobsen paid so that the mechanic's  
17 lien on the 113 current owners could be removed and  
18 the warranty on their properties completed.

19                 The second was to provide money so that  
20 vendors that had performed work in the past and had  
21 not been paid, even though they acted in good faith,  
22 could be paid at 100 percent, at their election.

23                 Thirdly, we wanted to make sure that we  
24 tried to keep the property open and viable so that  
25 the 80-plus employees and their families that this

1 provides income to and a job could -- could stay  
2 there.

3 And lastly, we wanted to ensure that --  
4 that Sky Lodge would survive the bankruptcy so that  
5 the 113 owners that bought into a program would have  
6 a solid and viable plan funder behind this to ensure  
7 that things would continue forward as we had  
8 promised.

9 Q. And would the continued ongoing business  
10 and viability and vibrancy of the Sky Lodge Hotel  
11 also provide benefit to the Park City community --  
12 business community in general?

13 A. Yes. It has become a point of honor for  
14 much of the downtown organization.

15 Q. Is the plan that's being proposed in the  
16 best interest of creditors, sir?

17 A. Yes, it is.

18 Q. And the plan will enable the Sky Lodge to  
19 emerge as a going concern and maximize value?

20 A. Yes, it will.

21 Q. Please turn to Exhibit 8.

22 A. Yes.

23 MR. BLUMENTHAL: Your Honor, this is the  
24 plan supplement that was filed as required by the  
25 court orders. I would submit that that should be in

1 evidence and part of the record. I would move it in.

2 THE COURT: Is there any objection to  
3 Exhibit 8?

4 MR. WILSON: None, your Honor.

5 MR. HOFMANN: No objection to coming into  
6 evidence, but I don't think there's any -- certainly  
7 we've argued that there's inadequate notice of the  
8 plan supplement, but no objection to its admission  
9 into evidence.

10 THE COURT: Exhibit 8 is received.

11 (Exhibit-8 received.)

12 Q. (By Mr. Blumenthal) Could you turn to  
13 tab 6 of Exhibit 8.

14 A. Exhibit 6?

15 Q. Six?

16 A. Yes.

17 Q. I'm sorry. They're not tabbed -- wait.

18 A. It's right at the back.

19 MR. BLUMENTHAL: Yeah, it's Exhibit 6 to  
20 Exhibit 8, your Honor, with the cover sheet,  
21 "Executive Contracts."

22 Q. (By Mr. Blumenthal) Do you have that in  
23 front of you, sir?

24 A. Yes, I do.

25 MR. BLUMENTHAL: And do you have that,

1 your Honor?

2 THE COURT: Yes.

3 MR. BLUMENTHAL: Okay.

4 Q. (By Mr. Blumenthal) What is -- excuse me.

5 Who prepared that document?

6 A. I did.

7 Q. And what is it, sir?

8 A. It is a listing of all the leases and  
9 contracts to be assumed going forward.

10 Q. And what is the total amount of the amount  
11 to cure the leases that are required to be assumed  
12 under the plan?

13 A. Approximately \$3,000.

14 Q. Okay. And you, the debtor, has kept these  
15 fairly current; isn't that correct?

16 A. That's correct.

17 Q. Now, I'd like you to turn to Exhibit 7 in  
18 the book.

19 A. Yes.

20 Q. Now, there are basically two sub-exhibits  
21 in that, Exhibit A and B. Do you see those?

22 A. Yes, I do.

23 Q. And what is the first exhibit? I'll call  
24 it 7A.

25 A. 7A is the re-forecast of the remaining

1       five months of 2010 for the property, August through  
2 December. This is the consolidated top sheet, which  
3 is basically a summary of approximately 52 back  
4 worksheets that -- that roll forward into this.

5           Q.     And it reflects the revenues from hotel  
6 operations from August through year end 2010.

7           A.     That is correct.

8           Q.     As well as all of the expenses from  
9 operations of the Sky Lodge, correct?

10          A.     That is correct.

11          Q.     And that's the -- I'll quote the top half  
12 of the page. So from operations by the end of the  
13 year, is it correct that there's a hundred and --  
14 approximately \$135,000 of excess cash?

15          A.     That is correct.

16          Q.     Now, the bottom half reflects real estate  
17 sales of fractional units, correct?

18          A.     That's also correct.

19          Q.     And -- oh, this is two pages -- when you  
20 go -- and it also reflects, I guess on the backside  
21 of that, the -- after all sales that the debt service  
22 of the senior note of 6.2 million will be serviced,  
23 correct?

24          A.     That is correct.

25          Q.     It also reflects payments from unit sales

1 of the 10 million dollar -- what we are referring to  
2 as junior note issued under the plan, correct?

3 A. No, that would be detailed in the  
4 following exhibit.

5 Q. My apologies. But it does reflect what  
6 the net cash available would be per debt, correct?

7 A. Yes. The net cash available for debt  
8 after -- from the hotel operation sales of real  
9 estate and minus the A and G expenses of running the  
10 business will provide 1.162 million dollars in free  
11 cash flow to service debt.

12 Q. Now I would ask you to turn to Exhibit 7B  
13 and describe for the Court that what exhibit depicts.

14 A. This exhibit, basically if you look at the  
15 far left-hand column that says 2001 and there's a  
16 notation on --

17 Q. 2010, you mean?

18 A. 2010. I'm sorry -- August through  
19 December only. That is basically the sheet that we  
20 were looking at before rolling forward on an  
21 annualized basis. And then going across is 2011  
22 through 14, which is the estimation of these various  
23 areas of a five-year period.

24 That gets you -- down at the bottom of  
25 this page is a -- is a loan payment schedule for the

1       10 million dollar junior debt, which shows how the  
2       projected real estate sales, net real estate sales  
3       will be used to pay down that note plus its accruing  
4       interest.

5                   And then on the next page, or on the back  
6       of this page, is a cash position statement for each  
7       year, which shows where you are with incomes and adds  
8       and pluses to get you to a cash position at the end  
9       of the year.

10          Q.       And in year 2011 under the junior note  
11       WestLB agreed that the -- only 90 percent of the net  
12       sales proceeds would be applied to the junior debt  
13       during that year, correct?

14          A.       That is correct. And the hundred percent  
15       all other years.

16          Q.       All other years. And the other sheets,  
17       are they backup to this cover sheet in Exhibit 7B?

18          A.       Yes. The sheet afterwards that basically  
19       states "Sky Lodge Five Year Hotel Operation Pro  
20       Forma" is -- is the hotel operation. And the next  
21       sheet, or on the back of that sheet, is backup with  
22       regards to that particular worksheet.

23                   On the following page there's one that  
24       says, "The Sky Lodge Real Estate Sales Pro Forma,"  
25       and that is the estimated sale through -- of the

1 remaining 63 fractions.

2 Q. Now, you have prepared budgets and cash  
3 flows in this case since the inception, correct?

4 A. That is correct.

5 Q. And they were pro forma budgets and then  
6 you had to compare your pro forma budgets with actual  
7 performance, correct?

8 A. Correct.

9 Q. Could you tell the Court how accurate --  
10 or the results of your projections and what actually  
11 occurred?

12 A. Our hotel operating net bottom line came  
13 in at 22.3 percent better than the pro forma  
14 projections.

15 Q. So you've been more than accurate and  
16 actually better -- your performance has been better  
17 than projected, correct?

18 A. That is correct.

19 MR. BLUMENTHAL: Your Honor, I would move  
20 these exhibits into evidence.

21 THE COURT: Is there any objection to  
22 Exhibits 7A and 7B?

23 MR. HOFMANN: None.

24 MR. WILSON: None, your Honor.

25 THE COURT: Exhibit 7A and 7B are

1 received.

2 (Exhibits-7A and -7B received.)

3 Q. (By Mr. Blumenthal) Now, could you  
4 compare the Sky Lodge's performance to other hotels  
5 and resorts in the Park City area?

6 A. Certainly.

7 Q. Would you, please?

8 A. The Sky Lodge is part of a reporting  
9 consortium called Smith Travel Research, and every  
10 month there is a report that's issued that they  
11 compile and send out called the *Star Report*. That  
12 *Star Report* is a competitive set analysis. In other  
13 words, you are -- you are compared in key areas of  
14 revenue generation against a cumulative average of a  
15 competitive set.

16 Our competitive set is: The St. Regis  
17 Deer Crest; the Hotel Park City, which is a four  
18 diamond leading hotel; Stein Eriksen, which is a five  
19 star, five diamond; and The Canyons Resort out at The  
20 Canyons, which is a four diamond.

21 Year-to-date, our performance is, is that  
22 our occupancy is 98 percent of the competitive set,  
23 which means we're running two percent below. Our  
24 average daily rate -- which is an industry number  
25 that is basically saying, what is your average room

1       rate renting for that you actually sell on a daily  
2       basis -- runs 142 percent above the competitive set.  
3       And our rev par, which is revenue per available room,  
4       which is another industry standard, runs 134 percent  
5       above the competitive set.

6           Q.     Now, we touched upon it, but the two notes  
7       that the Class 1 creditor is getting, there's a  
8       senior note, which we call a senior note, of 6.2  
9       million dollars, correct?

10          A.     That is correct.

11          Q.     And that is going to be paid on a monthly  
12       basis based upon a ten-year amortization, correct?

13          A.     Yes. And that's the number I used in the  
14       schedules.

15          Q.     And that's the \$65,000 a month number.

16          A.     And it was provided to me by WestLB.

17          Q.     Right. And the junior note is a 10  
18       million dollar note that's paid out of net sales of  
19       the sale of the fractional units, correct?

20          A.     Yes. And it has compounding -- it has  
21       accruing interest.

22          Q.     Okay. It accrues and then paid as the  
23       sales occur.

24                   Now, these restructured notes allow  
25       sufficient cash flow -- is it correct that these

1 restructured notes will allow sufficient cash flow to  
2 pay all operating expenses at the Sky Lodge?

3 A. Yes, they will.

4 Q. It will also allow payment of all  
5 creditors that are getting paid out over time,  
6 correct?

7 A. That is correct.

8 Q. As well as servicing the senior note on a  
9 current basis?

10 A. That is also correct.

11 Q. And the sales will amortize the junior  
12 note by 2013 under your projections, correct?

13 A. According to our projections, yes.

14 Q. Now, isn't it a fact that you've been  
15 unable to sell units during this bankruptcy case?

16 A. Yes.

17 Q. And shortly -- as well as shortly before?

18 A. Yes.

19 Q. Okay.

20 A. It is -- it's a near impossibility to sell  
21 a second-home vacation product with -- that has liens  
22 and is in a property that's in the middle of a  
23 Chapter 11 reorganization and -- and there's no clear  
24 direction out of the -- of where the property's going  
25 in the future.

1           Q.       Now, have you been getting inquiries and  
2 interest in actually purchasing fractional units?

3           A.       Yes.

4           Q.       And what is your opinion on the ability to  
5 sell these units once the plan is confirmed and the  
6 Sky Lodge emerges from bankruptcy with your continued  
7 involvement in the project?

8           A.       I think it's quite good.

9           Q.       And do you believe the sales volume on the  
10 exhibits you just testified can be achieved?

11          A.       Yes. And that was also verified by the  
12 appraiser.

13          Q.       Okay. Who has the relationships or the  
14 relationship with the homeowners association at the  
15 Sky Lodge?

16          A.       I do.

17          Q.       Who has the relationship with the hundred  
18 and seven -- 113 --

19          A.       113.

20          Q.       -- homeowners at the Sky Lodge?

21          A.       I do.

22          Q.       Who has the relationship with the 80-plus  
23 employees who have been employed, some of them since  
24 the inception of this project, at the Sky Lodge?

25          A.       I do.

1 Q. Who has the relationships with the  
2 community at large in Park City?

3 A. I do.

4 Q. And who has the relationship in  
5 conjunction with the Sundance Film Festival that's  
6 staged each year?

7 A. I do.

8 Q. And is that the most profitable time for  
9 the Sky Lodge, during the Sundance Film Festival?

10 A. Absolutely.

11 Q. And who also has the relationships and  
12 manages with -- the process with the various  
13 licensing agencies for the Sky Lodge?

14 A. I'm the designated agent.

15 Q. Now, there are many licenses and permits  
16 that exist in addition to and separate and apart from  
17 the liquor licenses; isn't that correct?

18 A. From the Utah liquor licenses?

19 Q. Yes.

20 A. Yes. Absolutely.

21 Q. And WestLB has requested that you stay on  
22 board for the facilitation of the continuance of the  
23 Sky Lodge, correct?

24 A. That's correct.

25 Q. And in connection with that, you have

1       entered into an employment agreement where you've  
2       negotiated an employment agreement with them that's  
3       acceptable to both you and WestLB; is that correct?

4           A.     That is correct.

5           Q.     Could you turn to tab number nine, please?  
6       And do you recognize that document?

7           A.     Yes, I do.

8           Q.     Is that the employment agreement that will  
9       be entered into between you and WestLB under the  
10      plan?

11          A.     Yes.

12          Q.     And could you describe the duties that  
13       you'll have with respect to the new owner, which will  
14       be Heber Avenue, LLC -- pardon me if I have not  
15       gotten the name correct -- on a going-forward basis  
16       from the closing under the employment agreement?

17          A.     I believe that from the closing, in the  
18       short term much of what I have been doing I will  
19       continue to do in addition to beginning the process  
20       of working with the new management company that  
21       the -- that Heber Avenue is bringing in to begin the  
22       transition, educate them on the nuances of the  
23       building, and begin the process of turning over all  
24       the licenses, the contracts, the agreements with the  
25       employees, the issues in the contracts that are with

1       the current homeowners on the rental program -- of  
2       which there's 113 -- going through the regulatory  
3       agencies and introducing these people to them so that  
4       there's a smooth transition, and communicating with  
5       the homeowners and the community and everyone else at  
6       large that -- that I am still there and that Sky  
7       Lodge will continue to be going forward in a positive  
8       way, and that they should have no doubt as to the  
9       success and future of the project.

10           Q.     So, therefore, the transition will be a  
11       continuation of what exists today in a seamless  
12       transition, correct?

13           A.     That is the goal.

14           Q.     Now, at the very end of the employment  
15       agreement, that's the list of all the various  
16       permits, licenses, insurance agreements, contracts  
17       and leases that you'll be responsible to, under the  
18       employment agreement, transition over to the new  
19       owner; is that correct?

20           A.     That's correct.

21           Q.     Now, let's turn to the liquor licenses  
22       because there's been a lot of hullabaloo here about  
23       the liquor license. Could you please describe the  
24       history of the liquor license, sir?

25           A.     Yes. First I would like to state that I

1 have been approved by the State of Utah to be a  
2 holder of the liquor license since 1992. In the case  
3 of the current liquor licenses, Easy Street Brasserie  
4 was formed in 2002 as a restaurant, and I was the  
5 owner and the holder of the initial license for that  
6 property.

7 Q. Right. You were the holder of the -- you  
8 were also the owner of Easy Street Brasserie?

9 A. That is correct.

10 Q. And that had -- at the time, Sky Lodge  
11 wasn't even thought of, correct?

12 A. It was a dirt parking lot.

13 Q. Okay. Continue.

14 A. I think it is very important, as there  
15 seems to be confusion, in the State of Utah the only  
16 owner of the liquor license is the State of Utah.  
17 Anyone who has gone through that process is well  
18 educated on that because you are informed on that by  
19 the State. The license or your ability to continue  
20 as the guardian and holder of that license is an  
21 annually-renewable privilege that only happens after  
22 you have had a full audit by the UDABC compliance  
23 officers onsite and they review in the commission any  
24 infractions, violations, or malfeasance that occurred  
25 in the prior year. If that's the case, then you as

1 the individual must go down to the committee, to the  
2 council, and appear before them and plead your case.  
3 Which, if you win, you may get it again and if you  
4 don't, the license will disappear.

5 In the case of Easy Street Brasserie, we  
6 held that license until April of 2005. In 2005 we  
7 surrendered it because under Utah Beverage Act unless  
8 you are open and operating uninterrupted -- and you  
9 can have a 90-day interruption, but if it's longer  
10 than that you must surrender your license and reapply  
11 when you are then able to go back into business. In  
12 November of 2007 I reapplied for the licenses  
13 necessary to operate the Sky Lodge.

14 Another important point that everybody  
15 must keep in mind is that every license in the state  
16 of Utah for liquor consumption is done on a physical  
17 red line. By red line, that's nomenclature, but  
18 basically they take -- they designate a physical  
19 space in which liquor can be served under a specific  
20 license, and we have four licenses at Sky Lodge: Two  
21 for Easy Street Restaurant, one for the Sky Club on  
22 the fourth floor, and one for a banquet catering  
23 license which allows us to do events in certain  
24 areas.

25 Those licenses were issued and granted in

1 November of 2007. We opened in December of 2007.  
2 And they were renewed -- some were renewed. Two of  
3 them renew automatically in the middle of the year  
4 and the other two renew in October of the year.

5 Q. Why, at a certain point in time, was the  
6 registration of the licenses changed from Cloud 9 SL  
7 Management, LLC to Cloud 9 Resorts?

8 A. That was done at the behest of the  
9 partners after it became evident that there was  
10 growing friction between the partners and  
11 Mr. Wickline.

12 Q. So you got Mr. Wickline on the one hand  
13 and all the other partners on the other hand,  
14 correct?

15 A. That's correct. And if, in fact, there  
16 had been an action by the partners to either remove  
17 Cloud 9 SL Management or something happened to  
18 Cloud 9 SL Management and it became paralyzed as an  
19 entity, those licenses would have immediately been in  
20 jeopardy for the project. And, therefore, that could  
21 have been a serious problem for the partnership. So  
22 I was asked to have those licenses registered --  
23 again, they were under my holding and they were  
24 registered to a new physical entity. And at that  
25 point, they were there, therefore, protected from any

1 potential blowups within the partnership.

2 Q. Okay. And that was done for the  
3 protection of Easy Street Partners as well as the  
4 creditors of Easy Street Partners; is that correct?

5 A. Yes. It would be very hard to run the  
6 business without a liquor license.

7 Q. Now, when the closing occurs under the  
8 plan, could you describe the process that will occur  
9 with respect to the liquor license?

10 A. Yes.

11 MR. BLUMENTHAL: Your Honor, I would move  
12 the employment agreement into evidence.

13 THE COURT: Any objection?

14 MR. WILSON: No objection, your Honor.

15 MR. HOFMANN: None.

16 THE COURT: Exhibit 9 is received.

17 (Exhibit-9 received.)

18 Q. (By Mr. Blumenthal) Go ahead. I'm sorry  
19 to interrupt you. I asked you, could you describe  
20 when the closing occurs the process that will occur  
21 in conjunction with the liquor license.

22 A. Yes. This process, which I have been  
23 through before in the state of Utah in the sale of an  
24 ongoing resort property with the liquor license, is  
25 fairly clear. Utah requires that at the closing

1 date, when the ownership of an entity moves from one  
2 person to another, that if the person who is the  
3 custodian or agent of that licensee is not employed  
4 by the new owner or there's not an arrangement made  
5 for an interim agreement, that that license must be  
6 surrendered by law by the holder immediately upon the  
7 closing date.

8 Q. What would occur if you were not employed  
9 by Heber Avenue, LLC at the closing?

10 A. I would comply with the law and take the  
11 licenses to the UDABC on the closing date.

12 Q. And they'd need to be surrendered,  
13 correct?

14 A. They would be surrendered and the property  
15 would no longer be able to serve alcoholic beverages.

16 Q. Okay. Other than the UDABC liquor  
17 licensing governing body that you've just described,  
18 are there any other regulatory governmental agencies  
19 that have jurisdiction over Easy Street Partners?

20 A. No.

21 Q. You indicated that you spoke to over 60  
22 potential plan funders or persons that were  
23 interested in acquiring the Sky Lodge, correct?

24 A. Uh-huh, yes, sir.

25 Q. Were there offers made to actually, rather

1 than just fund the plan, to buy the project as is?

2 A. Approximately six people discussed that  
3 option with us.

4 Q. And what were the range of offers that  
5 were being received?

6 A. Between 10 and 13 million dollars.

7 Q. Okay. What will occur, sir, if this plan  
8 is not confirmed and we're forced into a liquidation?  
9 Do you have an opinion as to what Easy Street  
10 Partners would realize from a forced sale of Sky  
11 Lodge's assets?

12 A. You'd be lucky to get 10 million dollars  
13 for the property.

14 Q. However, if this plan is confirmed,  
15 operations would continue and there would be no  
16 material adverse change in the foreseeable future,  
17 correct?

18 A. That is correct.

19 Q. Will there, if this plan is confirmed, be  
20 any need for further financial reorganization?

21 A. Not in my opinion.

22 Q. Now, I'd ask you to turn to -- first of  
23 all, are you familiar with two entities, Cloud 9 SL  
24 Management, LLC and Cloud 9 SL Development, LLC?

25 A. Yes, I am.

1           Q.     Could you describe for the Court those  
2 entities.

3           A.     Both those entities are special-purpose  
4 entities that were created for two specific tasks.  
5 The Development entity was created to provide a  
6 vehicle by which Cloud 9 Resorts and Alchemy Ventures  
7 could contract with Easy Street Partners to provide  
8 the development management.

9           Q.     Alchemy is owned by David Wickline, Cloud  
10 9 Resorts is owned by yourself, correct?

11          A.     To be very precise, Cloud 9 is owned 100  
12 percent by myself.

13          Q.     Yes.

14          A.     And to the best of my knowledge,  
15 Mr. Wickline is the sole owner of Alchemy, but I  
16 don't know that for a fact.

17          Q.     Okay.

18          A.     These two entities, Development was  
19 created so that we could contract with Easy Street  
20 Partners to provide the development management  
21 oversight, and for that there was a contractual fee  
22 arrangement that was made.

23                 In addition, there was another entity  
24 which was Management, which was created so that an  
25 ongoing hotel management contract could be executed.

1       And so once the property was open, we would -- the  
2 entity would then be the -- the designated manager of  
3 the property.

4           Q.     Okay. With respect to Management -- we'll  
5 just call it SL Company Management -- the two  
6 entities: One, Management, one, Development. With  
7 respect to Management, who's the manager of that  
8 company?

9           A.     I am.

10          Q.     And that's the company that does, in  
11 essence, the day-to-day management of the Sky Lodge,  
12 correct?

13          A.     That is correct.

14          Q.     When was the last time Mr. Wickline was at  
15 the property?

16          A.     The last time that David Wickline was at  
17 the property in an official capacity that I know of  
18 was at the partners meeting in September of 2008.

19          Q.     And did Mr. Wickline ever participate in  
20 management of the hotel?

21          A.     No.

22          Q.     I'd ask you to -- just to digress a  
23 moment, are you allowed to sell the liquor license  
24 under the laws of Utah?

25          A.     No. The Beverage Act Commission is

1           absolutely specific; there is no sale of a license.

2           Q.     Could you please turn to Exhibit tab 10 in  
3       your book.

4           A.     Yes, sir.

5           Q.     What are -- what is that exhibit -- what  
6       is that exhibit?

7           A.     It's the articles of organization for  
8       Cloud 9 Resorts-Sky Lodge Management, LLC.

9                   MR. BLUMENTHAL: Your Honor, I'd ask that  
10      that be admitted into evidence.

11                  MR. WILSON: No objection, your Honor.

12                  MR. HOFMANN: No objection.

13                  THE COURT: Exhibit 10 is received.

14                  (Exhibit-10 received.)

15           Q.     (By Mr. Blumenthal) Now flip to  
16       Exhibit 11.

17                  What is that, sir?

18                  A.     That is an articles of organization for  
19       Cloud 9 Resorts-Sky Lodge Development, LLC.

20                  MR. BLUMENTHAL: Your Honor, I'd ask that  
21       Exhibit 11 be admitted.

22                  MR. WILSON: No objection, your Honor.

23                  MR. HOFMANN: No objection.

24                  THE COURT: Exhibit 11 is received.

25                  (Exhibit-11 received.)

1           Q.       (By Mr. Blumenthal) Please turn now, sir,  
2 to Exhibit 12.

3           A.       Yes.

4           Q.       What is that document?

5           A.       It reads "Consent and Subordination of  
6 Management Agreement."

7           Q.       Have you -- are you familiar with that  
8 document?

9           A.       Yes, I am.

10          Q.       Have you and Mr. Wickline executed that  
11 document?

12          A.       I have -- I have executed that document.  
13 In this form, I do not see one for Mr. Wickline.

14          Q.       All right. I'm sorry. So this was  
15 executed by you on behalf of Easy Street Partners,  
16 correct?

17          A.       That's correct.

18          Q.       And that was a requirement at the closing  
19 of the WestLB loan, correct?

20          A.       It was -- I'm sorry. To be very -- let me  
21 back up. It was executed on behalf of Cloud 9  
22 Resorts Management.

23          Q.       I'm sorry. My apologies.

24          A.       And it was also executed on behalf of  
25 ABG-SL as the manager of Easy Street Partners.

1           Q.        Okay. And that was required at the time  
2       of the loan from WestLB, correct?

3           A.        Absolutely.

4           MR. BLUMENTHAL: I'd move Exhibit 12 into  
5       evidence.

6           MR. WILSON: No objection.

7           MR. HOFMANN: None.

8           THE COURT: Exhibit 12 is received.

9           (Exhibit-12 received.)

10          Q.        (By Mr. Blumenthal) Exhibit 13, sir, what  
11       is that?

12          A.        Hang on. That is a -- sorry. That is a  
13       consent and subordination development agreement for  
14       Cloud 9 SL Development. And that is also signed by  
15       me as ABG-SL and for Cloud 9 SL Development Company.

16          MR. BLUMENTHAL: Your Honor, I'd move that  
17       into evidence.

18          THE COURT: Any objection?

19          MR. HOFMANN: No.

20          MR. WILSON: No objection, your Honor.

21       Sorry.

22          THE COURT: Exhibit 13 is received.

23          (Exhibit-13 received.)

24          Q.        (By Mr. Blumenthal) Sir, who -- who  
25       prepares the tax returns for Easy Street Partners, as

1 well as Easy Street Mezz and Easy Street Partners --  
2 Easy Street Holdings?

3 A. Independent CPA firms.

4 Q. And would those tax returns filed prior to  
5 August of 2009, were there tax returns that had not  
6 yet been filed?

7 A. That's correct. Yes.

8 Q. Now they've all been filed; is that  
9 correct?

10 A. That's correct also.

11 Q. And have all the members been treated  
12 equally in accordance with the operating agreements  
13 of all the various entities?

14 A. Yes. As the CPAs have done from the  
15 operating agreement, yes.

16 Q. And one last question. Who caused the  
17 removal of ABG-SL as the manager of ES -- Easy Street  
18 Holdings back in August of 2009?

19 A. That was at a formal meeting called by  
20 Philo Smith of Smith Trust and PC I, and they both  
21 put forward a motion and a vote for the removal of  
22 ABG-SL for cause and it was brought to the members  
23 for a vote.

24 Q. And with the exception of Mr. Wickline,  
25 all of the other members voted in favor of that; is

1       that correct?

2           A.     That is correct.

3           MR. BLUMENTHAL: I have no further  
4       questions, your Honor.

5           THE COURT: All right. Well, don't get  
6       up, Mr. Wilson.

7           MR. WILSON: Has it come to that, your  
8       Honor?

9           THE COURT: It has. I think it's fairly  
10      apparent that we're not going to finish today, and I  
11      doubt, based on the cross-examination of the prior  
12      witness, that our cross-examination would conclude  
13      today.

14           MR. BLUMENTHAL: Your Honor?

15           THE COURT: Yes.

16           MR. BLUMENTHAL: We don't actually have  
17      any more witnesses in our case. I think with some  
18      jolting from the Court we could perhaps finish the  
19      cross-examination of Mr. Shoaf. But, of course, I  
20      don't know what his Honor's schedule is this evening.

21           THE BAILIFF: Step to the microphone.

22           MR. BLUMENTHAL: I don't know what his  
23      Honor's schedule is this evening, but we would hope  
24      to finish today.

25           MS. JARVIS: Your Honor, let me just add,

1       the committee does have one witness, as we -- that  
2       also still needs to be heard.

3                   THE COURT: Well, unfortunately, I do have  
4       a commitment, Mr. Blumenthal. And with the  
5       cross-examination and the additional witness by the  
6       committee and then closing argument, I really doubt  
7       we can get done today.

8                   We could commence again Monday morning  
9       at 9:30. I do have the afternoon scheduled for  
10      another contested matter, but we would have all of  
11      the morning on Monday. If that isn't convenient to  
12      the parties --

13                  MR. HOFMANN: Your Honor, I don't --  
14      shouldn't be driving the bus here at all, but I do  
15      have a final fee application hearing at 10:30 before  
16      Judge Thurman. It's a fairly discreet, small matter.  
17      It should take no more than a half an hour. But if I  
18      could be excused during that time and -- I think that  
19      that could be feasible.

20                  THE COURT: That's fine.

21                  MR. BLUMENTHAL: Could we try to finish  
22      the cross of Mr. Shoaf?

23                  THE COURT: Well, the Court will take a  
24      recess and let me see if I can make some changes.

25                  MR. WILSON: Your Honor, I guess it's --

1 if we're expressing our druthers, we all know what  
2 this week has been. It would be --

3 THE COURT: Well, I don't think we all  
4 know. You and I know.

5 MR. HOFMANN: I know too, your Honor.

6 MR. WILSON: We know half, at least. It  
7 would be -- I don't anticipate taking too long, but  
8 it would be a great accommodation if we could begin  
9 at 9:30. I'll be as brief as I can.

10 MR. BLUMENTHAL: Your Honor, if he's, in  
11 fact, going to be brief, I'm flying back and forth  
12 between New York and Salt Lake and I would appreciate  
13 if we can take Mr. Wilson on his word and perhaps  
14 after the recess, if your Honor can accommodate us to  
15 be brief and go as far as we can go.

16 MR. WILSON: Well, my promise of brief was  
17 so that -- so that we would not be at risk of not  
18 completing the matter Monday morning. We're going to  
19 be back in any event. I don't anticipate that my  
20 involvement will jeopardize completion of this matter  
21 in the time allotted Monday.

22 THE COURT: Well, let's do this. I'll  
23 take a very, very brief recess and we can get started  
24 and see how it's going.

25 MR. BLUMENTHAL: Thank you, your Honor.

1                   THE COURT: Okay. Court is in recess.

2                   THE BAILIFF: All rise.

3                   (Recess taken from 4:02 until 4:08 p.m.)

4                   THE BAILIFF: Please be seated.

5                   THE COURT: Have a seat here, Mr. Shoaf.

6                   Apparently the parties didn't take me at  
7 my word when I said a very brief recess, but...

8                   MR. WILSON: You were making your call and  
9 we were making ours, your Honor.

10                  THE COURT: Well, my call wasn't  
11 particularly successful. I can go until 4:30. I  
12 doubt that that's going to be sufficient time and  
13 I -- it's unfortunate for the parties, but on the  
14 other hand, we have had numerous confirmation  
15 hearings scheduled in this case and significant  
16 blocks of time that have not been used. And I  
17 understand the reasons why, but the Court opened this  
18 time on its calendar on very short notice a couple of  
19 weeks ago, and at that time perhaps the parties  
20 didn't anticipate that we were going to have the  
21 contest that we have today.

22                  I have, as I said, approximately half a  
23 day Monday. The rest of the week, I -- I don't have  
24 a full day, other than I could make another party  
25 unhappy and I could clear Friday completely. So I'll

1 take some feedback from parties.

2 MR. WILSON: I have conflicting matters on  
3 Monday, but I'm going to solve them and I'm happy to  
4 be here at 9:30.

5 THE COURT: Mr. Blumenthal and Mr. Havel,  
6 is there a preference for -- I mean, it sounds like  
7 we could conclude Monday morning. And if we were  
8 close to concluding, you know, I'd even run into the  
9 afternoon and make some other people wait as well.

10 MR. WILSON: Coal miners are a tough lot,  
11 your Honor.

12 MR. BLUMENTHAL: I would prefer Monday  
13 morning, your Honor.

14 THE COURT: All right.

15 MR. BLUMENTHAL: I want to get this thing  
16 confirmed. As time passes, it becomes problematic.

17 THE COURT: I understand.

18 MR. HAVEL: Monday's fine, your Honor.

19 THE COURT: Well, let's do -- let's  
20 adjourn then and reconvene Monday morning at 9:30  
21 and --

22 MR. BLUMENTHAL: Well, I'm sorry. Were  
23 you going to do 20 minutes or --

24 THE COURT: Well, yes, we can --

25 MR. WILSON: It would be a great personal

1 accommodation if we didn't have to. But I'm -- and I  
2 don't mean professional accommodation.

3 THE COURT: Well, I -- I don't anticipate  
4 that we can get done in 20 minutes, and it probably  
5 makes more sense to take the cross-examination in a  
6 block rather than break it up for 20 minutes today  
7 and then Monday. All right. I really don't think  
8 20 -- I'll give 20 minutes Monday if we have to as  
9 opposed to today, so...

10 All right. Thank you. Court is in  
11 recess.

12 THE BAILIFF: All rise.

13 (Court adjourned at 4:12 p.m.)

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**REPORTER'S CERTIFICATE**

STATE OF UTAH )  
COUNTY OF SUMMIT ) SS.

I, Jennifer E. Garner, Registered Professional Reporter and Notary Public in and for the State of Utah, do hereby certify:

That on July 6, 2010 I transcribed an electronic sound recording at the request of Attorney Annette Jarvis;

That the statements and testimony of all speakers were reported by me in stenotype and thereafter transcribed, and that a full, true, and correct transcription of said statements and testimony is set forth in the preceding pages, according to my ability to hear and understand the electronic sound recording provided;

That the original transcript was sealed and delivered to Attorney Annette Jarvis for safekeeping.

I further certify that I am not kin or otherwise associated with any of the parties to said cause of action and that I am not interested in the outcome thereof.

WITNESS MY HAND AND OFFICIAL SEAL this 6th  
day of July, 2010.

Jennifer E. Garner  
Jennifer E. Garner, CSR, RPR  
Notary Public  
Residing in Summit County

